

REMARKS

Claims 15, 21, and 25-28 are currently amended. Claim 16 is currently canceled without prejudice. Applicants reserve the right to pursue the canceled subject matter in any related application claiming priority to the instant application. Claims 1-14, 17-20, 22-24 and 30-34 have been withdrawn from consideration. Claims 15, 21 and 25-29 are currently under examination. Reconsideration of the application in view of the current claims is respectfully requested and further in view of the following Remarks.

I. PRIORITY CLAIM TO U.S. PROVISIONAL APPLICATION NO. 60/467,255

The Office Action has alleged that the previously pending claims were not entitled to claim priority to Provisional Application No. 60/467,255 filed April 30, 2003 and only accorded them priority to PCT/US04/13175 filed April 28, 2004. Applicants disagree with the Office Action and maintain that those claims were entitled to claim priority to the provisional application. This disagreement, however, is rendered moot because the instant claims, as amended, are drawn to a substantially purified cellulase polypeptide with the biological activity of a cellulase, comprising the amino acid sequence of SEQ ID NO:3. With the removal of the percent identity language that formed the basis of the Office Action's priority determination, Applicants submit that the application is unambiguously entitled to the priority date of the Provisional Application. Thus, Applicants request the restoration of the instant application's priority to the provisional application.

II. OBJECTIONS TO THE SPECIFICATION

The Office Action has objected to the specification for allegedly omitting Figures 1-3. While Applicants maintain that the drawings were filed, Applicants resubmit Figures 1-3 herewith. Accordingly, Applicants respectfully request that the objection to the specification be withdrawn.

III. OBJECTIONS TO THE CLAIMS

The Office Action has objected to the claim 21 for reciting the phrase "an cellulase." This objection is rendered moot because claim 21 has been amended and no longer recites this phrase. Therefore, Applicants respectfully request that the objection to claim 21 be withdrawn.

IV. CLAIM REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

The Office Action has rejected claim 21 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Office Action alleges that the phrases "90% sequence identity to presented as SEQ ID NO:1" renders claim 21 indefinite. It further alleges that analyzing polynucleotide homology using the BLOSUM 30 matrix renders the claim indefinite, as does the phrase "an cellulase." These rejections, however, have been rendered moot because claim 21, as amended, does not recite the allegedly offending language. Thus, Applicants respectfully request withdrawal of this rejection.

V. REJECTION UNDER 35 U.S.C. § 112, FIRST PARAGRAPH - ENABLEMENT

The Office Action has rejected claims 15, 16, 21, and 25-29 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. *See* Office Action p 5. In particular, the Office Action alleges that the claim 15(a) is so broad as to encompasses polypeptides wherein the sequence having at least 95% identity to SEQ ID NO: 3 does not have cellulase activity. It also alleges that claim 21(a) is so broad as to encompass the genus of any cellulase encoded by a sequence having at least 90% identity to SEQ ID NO: 1. The Office Action further alleges that claim 25(a) is so broad as to encompass the genus of any polypeptide having at lease 95% identity with SEQ ID NO: 3, wherein the polypeptide has any or no function. While Applicants disagree with the Examiner's interpretations of the claims, the rejection has been rendered moot because the amended claims no longer recite percent sequence identity limitations. Thus, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. §112, first paragraph.

VI. REJECTION UNDER 35 U.S.C. § 112, FIRST PARAGRAPH – WRITTEN DESCRIPTION

The Office Action has rejected claims 15, 16, 21, and 25-29 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. *See* Office Action p. 6 and the April 20, 2009 Office Action at p. 8. It is alleged that the claim elements relating to a polypeptide having at least 85% sequence sequence identity with SEQ ID NO:3 lack written description. While Applicants disagree with the Examiner, the rejection has been rendered moot because the amended claims no longer recite the 85% sequence identity limitations. Thus, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. §112, first paragraph.

VII. CLAIM REJECTIONS UNDER 35 U.S.C. § 102

The Office Action has rejected claims 15, 16, 21, 25-27, and 29 under 35 U.S.C. § 102(e) as being anticipated by Jones et al. (International Publication No. WO04/099370, hereinafter “Jones”). In citing Jones as prior art under 35 U.S.C. § 102(e), it relied on its determination that the previously pending claims were not entitled to claim priority to Provisional Application No. 60/467,255 filed April 30, 2003 and only accorded them priority to PCT/US04/13175 filed April 28, 2004. As discussed above, Applicants disagree with the Office Action’s determination. The amended claims, however, do not recite the percent identity limitations that formed the basis of this determination and the instant claims are unambiguously entitled to the April 30, 2003 priority date. Thus, Jones is not citable as 102(e) art and Applicants respectfully request withdrawal of this rejection.

VIII. CLAIM REJECTIONS UNDER 35 U.S.C. § 103(A)

The Office Action has rejected claim 28 under 35 U.S.C. § 103(a) as being unpatentable over Jones in view of Fowler et al. (U.S. Patent No. 6,407,046, hereinafter “Fowler et al.”). For the reasons discussed above, Jones is not citable as 102(e) art and Applicants respectfully request withdrawal of this rejection.

Application No. 10/549,944
Amendment dated October 8, 2010
Reply to Office Action of May 14, 2010

CONCLUSION

For the foregoing reasons, Applicants request the Examiner allow claims 15, 16, 21 and 25-29 and advance the application to issuance.

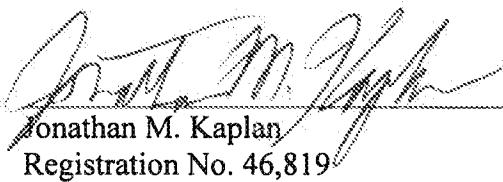
FEE AUTHORIZATION

The Commissioner is authorized to charge any additional fees which may be required, including petition fees and extension of time fees, to Deposit Account No. **07-1048** (Docket No. GC798-2-US).

Respectfully submitted,

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